UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SKIDMORE ENERGY, INC., et al.	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 3: 03-CV-2138-B**
	§	
KPMG, et al.	§	
	§	
Defendants.	§	

ORDER GRANTING DEFENDANTS' MOTION FOR RULE 11 SANCTIONS AGAINST PLAINTIFFS SKIDMORE ENERGY, INC. AND GEOSCIENCE INTERNATIONAL, INC., AND THEIR ATTORNEY, GARY SULLIVAN

Before the Court is the Motion for Sanctions of Defendants MFM, MPE, A. Kamel, Samaha, Nackvi, Menkin, Mediholding, Benslimane, Alaoui, Bisk and Crain Caton against Plaintiffs Skidmore Energy, Inc. and Geoscience International, and Their Attorney Gary Sullivan, filed August 16, 2004 ("Defendants' Motion for Sanctions")(doc. 253). These eleven defendants claim that Plaintiffs' suit against them is factually and legally groundless and seek appropriate sanctions under Rule 11 of the Federal Rules of Civil Procedure. Hearings were held on the motion on February 2 and 28, 2005. For the reasons stated below and on the record at the close of the February 28, 2005 hearing, the Court agrees with Defendants and **GRANTS** the Defendants' Motion for Sanctions.

I. BACKGROUND

The background of this case is familiar territory at this point in the proceedings. Plaintiffs' unsuccessful oil and gas exploration activities in Morocco triggered a lawsuit against them in that country followed by this suit, which was filed by Plaintiffs on September 19, 2003. In this case,

Plaintiffs sued twenty-one mostly foreign defendants for violations of the United States' Sherman Antitrust Act, 15 U.S.C. §§ 1-2, and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.*, and for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, libel, civil conspiracy, and fraud.[1] The Defendants each responded with motions to dismiss, asserting pleading and jurisdictional defects in the complaint. The Court granted the Defendants' motions and dismissed all twenty-one Defendants from the case as set forth below.

All of the nonresident Defendants sued in their individual capacities – Benslimane, Alaoui, Benmoussa, A. Kamel, S. A. Kamel, Menkin and Nackvi – were dismissed for lack of personal jurisdiction on September 3, 2004. Plaintiffs' claims against Prince Bandar were dismissed for lack of subject matter jurisdiction on December 3, 2004. That same day, the Court dismissed non-resident company Defendants MPE, MFM, Samaha, Dallah, and Mediholding for lack of personal jurisdiction, and also denied the Plaintiffs' motion for antisuit injunction. Finally, on December 28, 2004, the Court dismissed the case against Defendants KPMG, Rosetti, Quinn, Faisal, Saudi Aramco, Saoud, Bisk, and the law firm of Crain, Caton, & James, P.C. ("Crain Caton") for failure to state a claim and for lack of subject matter jurisdiction, and against defendants Quinn and Rosetti for lack of personal jurisdiction over them.

II. THE RULE 11 MOTION

A. *Defendants' Allegations*

In their Rule 11 Motion, Defendants complain that Plaintiffs have turned a potentially legitimate commercial and contractual dispute over the Moroccan investment project between a few

[1] (*See generally* Pls.' Orig. Compl.)

defined parties into a broad-based attack on numerous individuals and entities with little or no connection to the dispute. Defendants also charge that Plaintiffs' sensational accusations against them of organized crime, racketeering, wire and mail fraud, antitrust violations, money laundering, and terrorism financing are bereft of any factual foundation. They cite to numerous examples of the offensive language in Plaintiffs' Complaint and RICO case statement ("RCS") including:

- "Defendants used the Liechtenstein company as a means of money laundering and to that end attracted funds from the United States." (Pls.' Orig. Compl, p. 20 ¶ 80);
- "Defendants' threats and money laundering are extraordinarily serious in view of the documented record of financing terrorist and terrorist related organizations." (Pls.' Orig. Compl. p. 20 ¶ 80);
- "[Defendants]..have committed numerous criminal acts, including but not limited to mail and wire fraud, extortion, bribery and attempted bribery, and money laundering." (Pls.' Orig. Compl. pp. 19-20 ¶ 75);
- "Defendants have been aided and abetted in their illegal scheme by elements of classical organized crime and their associates..." (Pls.' Orig. Compl. p. 21 ¶ 83);
- "[P]laintiffs were the victim (sic) of a complex and sophisticated enterprise to defraud American investors out of capital and technology. The enterprise utilized layers of investment companies to funnel money and conceal the true owners from other investors, in a manner typical of money laundering schemes." (RCS p. 2);
- "...[I]t was clear that the remaining investors in MPE were several layers of front companies...Although Plaintiff does not have proof of specific money laundering activities, this structure...is a typical method of conducting money laundering activities." (RCS p. 14);
- "[Several of the Defendants] are currently under investigation or are Defendants in civil litigation related to alleged financing and support of unlawful activities including money laundering and terrorism." (RCS p. 14).

Defendants further complain that Plaintiffs improperly included the Defendants' attorneys, Reuven Bisk and the law firm of Crain Caton in the suit without any factual basis that either had a connection to the Moroccan dispute other than the rendering of legal services to investors in MPE

and to MPE itself. Moreover, Defendants argue that Reuven Bisk was not even employed by Crain Caton at the time of the events underlying the lawsuit.

To sum up, Defendants maintain that Plaintiffs have taken a commercial legal dispute in Morocco between well-defined parties and used it as a vehicle to harass and embarrass them by suing numerous individuals with little or no connection to the dispute and publicly accusing them in the suit of unfounded sensational wrongdoing.

B. Plaintiffs' Response

A common thread weaving its way through this case, beginning with Plaintiffs' responses to the Defendants' motions to dismiss, continuing through their written response to the Rule 11 motion and surfacing again in their arguments at the Rule 11 hearings, is the puzzling lack of legal or factual support articulated for the pleadings. Boilerplate and vague, Plaintiffs make no concrete effort to defend either the broad range of Defendants they included in this suit or the inflammatory charges they level against them in their pleadings. Characteristic of Plaintiffs' failure to articulate any evidentiary support for their claims is their written response to Defendants' argument that Plaintiffs' money laundering and terrorism allegations are completely unfounded. In their defense of their allegations, Plaintiffs write:

> The Defendants claim that allegations of [m]oney laundering and [t]errorism are sensational and have no relation to the present lawsuit. The way in which Plaintiffs' investment in Morocco was stolen has all the elements of a money laundering scheme. The U.S. Patriot Act and related laws place an affirmative duty on the Plaintiffs .... to take action against suspected money laundering that may be in support of terrorism. Defendants misunderstand or misrepresent the duty of these Plaintiffs...under United States law." (Pls.' Br. at 4)

To argue that "the way" their investment was stolen "has all the elements of a money laundering

scheme" without more not only fails to justify their inclusion of these allegations in the pleadings, it also raises questions as to whether any evidentiary support exists for such claims. Without identifying them, Plaintiffs also claim to have "presented many items of evidence through the pleadings and motions filed in this case, including affidavits attesting to the basis for the claims that Dallah al Baraka and Prince Bandar were directly involved in the MPE." (Pls.' Br. at 3) The appendix of exhibits attached to their response, consisting of photographs of the Moroccan project, a DVD of a Moroccan television report on the project and two website listings relating to their Moroccan concessions, adds nothing to support their pleadings. (*See* App. to Pls.' Resp.)

C. *The Hearings*

Due to the vague response by Plaintiffs to the Rule 11 motion, the Court scheduled a hearing on the motion for February 2, 2005. After Defendants' counsel presented his argument in favor of the motion, Plaintiffs' counsel, Mr. Gary Sullivan ("Sullivan"), took his turn at the lectern only to present a perplexingly vague explanation - similar to his written response - as to the legal and factual bases for his pleadings. In essence, he made reference to having initiated a pre-filing investigation by a former FBI agent to determine the existence and location of banks in the U.S. connected to one or more of the Defendants. (Tr. I[2] at 18-20). He further claimed to have had an accounting firm review Skidmore's records to ascertain whether his client had invested the 27 million dollars in the Moroccan project he claimed he had. (*Id.* at 20) Finally, he asserted he hired an independent oil and gas expert to review the data from the Moroccan project to establish that it had been a viable venture. (*Id.* at 21) Because none of these pre-filing inquiries he described appeared to have a

[2] "Tr. I" and "Tr. II" refer respectively to the transcripts of the hearings held February 2 and February 28, 2005.

material connection to the legal and factual bases for his pleadings, the Court interrupted him and told him that he was not responding to the allegations in the Rule 11 Motion. When he continued to struggle to make a credible response to the motion, the Court made the following observation to him:

> You're not solving anything for me right now except giving me a lot of vagaries. And I will tell you, just from your demeanor and your answers to my questions, I am real concerned about whether or not you do have any answers to my questions.
>
> Where I think we are right now is I'm going to have an evidentiary hearing on [Defendants'] ...allegations and require that you come forward and meet specifically their allegations under Rule 11 with respect to each of the defendants that they say should never been named in here, with respect to each of the legal allegations which they say are completely unfounded in the law, and with respect to the sensational allegations and other factual allegations which they say violate Rule 11 ... (Tr. I at 35)

The Court further stated to Plaintiffs' counsel:

> You should have been prepared today to answer these questions, and you're not....I want the record to be clear, Mr. Sullivan, that you were not prepared today for this hearing. But rather than sanction you for serious allegations of a Rule 11 violation of the nature and breadth that we've got in this case, I want to be sure that you've had a full opportunity to meet each allegation in an evidentiary hearing on the record before me. So next time be prepared, like you should have been today for the hearing. (*Id.* at 36, 39)

The in-court instructions were followed up with a written order which directed as follows:

> An evidentiary hearing on the Defendants' Motion for Sanctions, filed August 16, 2004 ("Defendants' Motion") (doc. 253) is set for:
>
> Monday, February 28, 2005, at 10:00 a.m.
>
> .....
>
> As directed by the Court on the record at the February 2, 2005 hearing on the Defendants' Motion, the Court has determined that it is appropriate to hear evidence on the allegations contained in the Defendants' motion. Accordingly, three days prior to the hearing,

> the parties are to exchange exhibit and witness lists and file theses lists with the Court. Each side will have one hour to present their proof. For the reasons stated on the record at the February 2, 2005 hearing, Plaintiffs' counsel must be prepared to respond to the specific allegations in the defendants' motion. (2/3/05 Order).

On the day of the February 28, 2005 evidentiary hearing, Plaintiffs' counsel, much to the Court's dismay, was again unprepared to proceed. Not only had he failed to prepare and file a witness or exhibit list as ordered, he insisted that a motion to disqualify Defendants' counsel and a motion for discovery he had filed just days before the hearing somehow trumped the Court's order for the evidentiary hearing and effected a stay on his obligation to comply with the Court's directive. (Tr. II at 5-9) In fact, the Court denied the discovery motion two days before the hearing, and, after a short hearing, the Court had denied his motion to disqualify Defendants' counsel on the morning of the Rule 11 evidentiary hearing. (*Id.* at 9-61) The Court then proceeded with evidentiary hearing.

Unfortunately, Plaintiffs' counsel's presentation was essentially a repeat of his ill-prepared display from the previous hearing. Despite having failed to file a witness or exhibit list, the Court permitted him to present evidence. He called three witnesses including Skidmore's owner, Michael Gustin, Renn Rothrock, a petroleum engineer who had been hired as a consulting expert to evaluate the viability of Skidmore's claims of a significant discovery of reserves in Morocco, and Robert Foote, a scientist and corporate representative of Plaintiff Geoscience International, Inc. Neither Foote nor Rothrock's testimony provided any information to establish a factual or legal basis for the allegations at issue in the Rule 11 motion. (*Id.* at 181-194; 195-216)

Gustin's testimony centered on the events leading up to his investment in the Moroccan project, the legitimacy of his claims that he had made a significant find of oil and gas reserves in that country and his claim that control of the company had been wrested from him by actions of certain

of the Defendants.[3] (*Id.* at 119-163) None of his testimony, however, answered Defendants' charges that he had sued numerous other individuals with little or no factual or jurisdictional connection to the case. Nor did his testimony explain how the central dispute over his loss of control of MPE supported his accusations of money laundering, organized crime, racketeering, wire and mail fraud, antitrust violations or terrorism financing.

Gustin stated that he never discussed whether there was a problem with personal jurisdiction over the Defendants in the case with his attorneys. (*Id.* at 209) He described being "shocked" that the cases were dismissed on jurisdictional grounds. (*Id.* at 210) With respect to the basis for the allegations of money laundering, he stated that the only factual support he had was " I didn't know where the money [for the defendants' investment] came from…" (*Id.* at 210-11) He made vague references to "their" connection to a company in Florida and to the "9/11 lawsuit" and "the fact that we had so many unknowns about this Liechtenstein corporation and the involvement and Prince Bandar and Dallah Al Baraka" and that "there was no proof of where any of this money ever went." (*Id.* at 211-12) But he was entirely unable to articulate a factual nexus between any of the Defendants and verifiable money laundering activity. When asked about the organized crime and terrorism financing allegations, Gustin's response was, "I couldn't tell you right now other than Gary [Sullivan] had several people in Washington, D.C. helping him do research. I can't recall their names." (*Id.* at 212–13) When queried as to why the law firm was sued, Gustin responded, "…just the fact that they represented [Gustin's partner in the Moroccan project] and my company Skidmore

[3] The relationship of each of the Defendants to the Moroccan project and its ultimate failure is murky at best. The Defendants' brief in support of their Motion for Sanctions sheds some light on the matter. (*See* Defs.' Br. at 4-9)

Energy which owned the other two companies that have been discussed here today." (*Id.* at 213) Despite his inability to supply any factual support to defend his pleadings, Gustin stated he was "sure" that he reviewed the pleadings in this case with Sullivan before he filed them. (*Id.* at 216-17)

At the close of the hearing, the Court again questioned Sullivan on the nature of his factual and legal inquiry prior to filing this case and his RICO case statement. Once again, he was unable to articulate a factual or legal connection between the Defendants and the challenged allegations. When asked to support his money laundering allegations, Sullivan responded "I think I answered that question at the last hearing." (*Id.* at 224-25) Then in general terms, he described hiring "leading experts" to review his complaint before it was filed. (*Id.* at 225) In that connection, he referred the Court to an affidavit of attorney Ethan Burger, attached to his Motion for Discovery that was filed February 25, 2005, which he indicated established that he conducted a pre-filing inquiry on the case. (*Id.* at 225-26) In his affidavit, however, Burger only avers in very general terms that his firm was hired to "examine a variety of issues in connection with the facts involved in the present case." (Mot. for Disc., Burger Aff. at 3) He describes developing "biographical information on scores of individuals," a "document that showed possible relationships between such individuals," and a "chronology." (*Id.*) But nowhere does Burger supply any specifics as to the "facts" he examined or the "individuals" on whom he developed biographical information. Finally, when pressed again for "viable facts" to support his complaint, Sullivan responded that it would take "two months of testimony" to answer the Court's question. (*Id.* at 228-29) In the end, he reverted to supporting his pleadings in generalities maintaining he had "met with almost everybody in Washington and certainly nobody ever said I was off the mark." (*Id.* at 229)

III. ANALYSIS

A. *Legal Standard*

Rule 11(b) provides:

> By presenting to the court (whether by singing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, -
>
> > (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> > (2) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;
> > (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery....

FED. R. CIV. P. 11(b)(1),(2),(3).

The Rule places three affirmative duties on an attorney to which the attorney certifies he has complied by signing a pleading motion or other document, including: (1) that the attorney has conducted a reasonable inquiry into the facts which support the document; (2) that the attorney has conducted a reasonable inquiry into the laws such that the document embodies existing legal principals or good faith argument for extension, modification, or reversal of existing law; and (3) that modification is not interposed for purposes of delay, harassment, or increasing costs of litigation. *Childs v. State Farm Mut. Auto Ins. Co.*, 29 F.3d 1018, 1023-24 (5th Cir. 1994).

To evaluate whether an attorney has made a reasonable inquiry into the facts, a court should consider the time available to the signer for investigation, the extent of the attorney's reliance upon his client for the factual support for the document, the feasibility of a pre-filing investigation, whether

the attorney accepted the case from another attorney, the complexity of the factual and legal issues, and the extent to which the development of the factual circumstances requires discovery. *Id.* at 1026. The reasonableness of the legal inquiry is determined by considering the time available to the attorney, the plausibility of the legal view contained in the document, the *pro se* status of the litigant, and the complexity of the legal and factual issues. *Smith v. Our Lady of the Lake Hosp., Inc.*, 960 F.2d 439, 444 (5th Cir. 1992) (citing *Thomas v. Capital Sec. Servs.*, 836 F.2d 866, 875-76 (5th Cir. 1988)).

An attorney's subjective good faith provides no defense under the objective standard governing Rule 11. *Childs,* 29 F. 3d at 1024. Instead, the courts look to the objective reasonableness of the attorney's conduct at the moment the document was signed. *Jordaan v. Hall*, 275 F. Supp. 2d 778, 787 (N.D. Tex. 2003).

The Fifth Circuit has viewed the attorney's duty to conduct a reasonable pre-filing inquiry to be particularly important in RICO cases, reaffirming this position in *Smith* with the following quote:

> Given the resulting proliferation of civil RICO claims and the potential for frivolous suits in search of treble damages, greater responsibility will be placed on the bar to inquire into the factual and legal bases of potential claims or defenses prior to bringing such suit or risk sanctions for failing to do so.

Smith, 960 F.2d at 444(citing *Chapman & Cole v. Itel Container Int'l B.V.*, 865 F. 2d 676, 685 (5th Cir. 1989) (quoting Black & Magenheim, *Using the RICO Act in Civil Cases,* 22 Hou. Law 20 24-25 (Oct. 1984))).

B. Analysis

With respect to his factual inquiry, Sullivan insisted at the second hearing that he did conduct a pre-filing investigation before filing his complaint against the Defendants. But his

contention that he hired "leading experts" to help conduct the investigation was belied by his inability to articulate any specific information gleaned from this investigation to support his decision to include the allegations he leveled against the Defendants in the complaint and the RCS. Likewise, his claim at the first hearing that he engaged a former FBI agent, an accounting firm, and an oil and gas expert prior to filing did nothing to establish that he complied with his Rule 11 obligations because he simply could not supply any facts from these alleged undertakings to justify his pleadings accusing these Defendants of engaging in organized crime, racketeering, wire and mail fraud, antitrust violations, money laundering, and terrorism financing.

Sullivan also defends his pleadings by arguing, first in his response to the Rule 11 motion and again at the hearings, that his only pleading obligation under the Fifth Circuit authority is put the Defendants "on notice of the claims against them" not to establish a *prima facie* case of the elements of the claims. (Pls.' Br. at 3). But this argument also misses the mark. While the Federal Rules permit notice pleading, they do not "allow a plaintiff to abdicate the basic facts demonstrating his entitlement to relief." *Murphy v. White Hen Pantry Co.*, 691 F. 2d 350, 353 (7th Cir. 1982). As the Advisory Committee Notes to the 1993 amendments to Rule 11 provide:

> Tolerance of factual contentions in initial pleadings by plaintiffs or defendants when specifically identified as made on information and belief does not relieve litigants from the obligation to conduct an appropriate investigation into the facts that is reasonable under the circumstances; it is not a license to join parties, make claims, or present defenses without any factual basis or justification.

FED. R. CIV. P. 11, 1993 Advisory Committee Notes.

Sullivan cannot hide behind the notice pleading requirements to defend his failure to conduct a reasonable inquiry into the facts underlying his case. He had several chances to establish the

factual underpinnings of his case, including his response to the motions to dismiss, his response to the Rule 11 Motion, and his multiple opportunities at the lectern during the two hearings. He wholly failed to do so at every juncture. His stunning lack of preparedness to defend his pleadings at both Rule 11 hearings despite a clear directive from this Court undermines his credibility when he claims to have facts that support the allegations made in his pleadings. After reading all of his filings and exhibits, hearing from his witnesses, and vigorously questioning him at both hearings, it appears that, at the time Sullivan filed his complaint and RCS and continuing through the February 28, 2005 evidentiary hearing, he had no evidentiary support for the factual allegations underlying his causes of action and no "good reason to believe" that the facts he alleged were likely to have evidentiary support. *See* 5A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE §1335 (3d ed. 2004 & Supp. 2004).

The insufficiency of Sullivan's *legal* inquiry is revealed by the implausibility of his legal theories. As summarized above, all of the eleven defendants moving for sanctions were dismissed from the case on threshold legal grounds. Benslimane, Alaoui, A. Kamel, Menkin, and Nackvi were dismissed for lack of personal jurisdiction in an order entered September 3, 2004. In that order, the Court found, based on settled authority, that the Plaintiffs had failed to allege sufficient facts establishing a *prima facie* case for personal jurisdiction over these Defendants. The Court found their basic jurisdictional allegations "plainly insufficient" for "fail[ing] to allege sufficient facts to support a connection between Texas and any of these defendants." (9/3/04 Order at 13) Their alternative bases for *in personam* jurisdiction under RICO's venue provision and the "Absent Co-Conspirator Doctrine" were just as flimsy. RICO does not provide for service of process in a foreign country, a legal fact that a modicum of research by Plaintiffs' counsel would have established. And Plaintiffs

cited no authority establishing that the "Absent Co-Conspirator Doctrine" was even applicable to this case. MPE, MFM, Samaha and Mediholding were dismissed based on identical jurisdictional shortcomings. (12/3/04 Order at 7-13).

Plaintiffs' claims against attorney Reuven Bisk and the Crain Caton law firm were dismissed for failure to state a claim under Rules 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure. As described by the Court in its December 28, 2004 Order granting Bisk's and Crain Caton's Motion to Dismiss, the antitrust claims were "insufficient as a matter of law to plead the existence of a conspiracy or agreement to restrain trade." (12/28/04 Order at 11) With respect to the RICO claim against these Defendants, the Court found the allegations "especially deficient" with respect to Bisk and Crain Caton. (*Id.* at 17) When pressed by the Court at the second hearing for facts to support his allegations against Bisk, Sullivan referred to the "role that Mr. Bisk played in the deception leading up to the dilution." When asked how he knew that Bisk had played this role, Sullivan replied, "...I mean its his client. How did he not know." (Tr. II at 219-20) Based on the briefing and the arguments and evidence at the hearings, there does not appear to be any factual connection between Bisk and Crain Caton and the allegations underlying this suit other than the rendering of legal advice. And the legal advice rendered does not appear connected to the issue underlying this case - the change in control of MPE. As pointed out by the Defendants in their brief:

> Neither Reuven Bisk nor Crain, Caton: (1) were licensed to practice in Morocco; (2) participated as attorneys with respect to the corporate resolutions in question; or (3) served as accountants employed to assist KPMG in their accounting analyses. .... Indeed Reuven Bisk was not even employed by Crain, Caton at the time of the alleged wrongdoing.

(Defs.' Br. at 14 ¶ 34)

"Where a reasonable amount of research would have revealed to the attorney that there was no legal foundation for the position taken, Rule 11 sanctions will be imposed." *Jordaan*, 275 F. Supp. 2d at 787 (quoting *Collin County, Texas v. Homeowners Association for Values Essential to Neighborhoods, (HAVEN)*, 654 F. Supp. 943, 954 (N.D. Tex. 1987)). The absence of legal support for the claims against these eleven Defendants is evident from the texts of the three orders dismissing all of the Defendants and the claims against them from the suit. The orders also reveal that minimal legal research would have shown Plaintiffs that suing these Defendants under the legal theories alleged would be a fruitless endeavor. Missing from the complaint against Defendants Benslimane, Alaoui, A. Kamel, Menkin, Nackvi, MPE, MFM, Samaha, and Mediholding were very basic allegations supporting personal jurisdiction. With regard to the order dismissing Reuven Bisk and the Crain Caton from the case, as mentioned, the allegations against them failed to state legal claims sufficient to sustain the case against them. Finally, despite multiple opportunities, Plaintiffs have been wholly unable to explain how the facts surrounding the crux of the cases- their loss of control of MPE- in any way supports accusing the Defendants under the legal theories of RICO, organized crime, racketeering, wire and mail fraud, antitrust violations, money laundering, and terrorism financing.

In sum, Plaintiffs' allegations against these eleven defendants are not the product of an objectively reasonable inquiry into the facts or law as required by Rule 11 and appropriate sanctions will be entered.

C. ***Appropriate Sanctions***

Once the Court determines that there has been a violation of Rule 11(b), it may impose appropriate sanctions upon the responsible parties, attorneys or law firms. *Childs*, 29 F.3d at 1027.

It "must impose the least severe sanction on attorneys and parties who violate Rule 11," but the Fifth Circuit has affirmed a determination by a district court that the least severe sanction for a wholly frivolous lawsuit "is the imposition of reasonable attorneys' fees and expenses." *Id.* (citing *Granader v. McBee*, 23 F.3d 120, 124 (5th Cir. 1994)) A party moving for Rule 11 sanctions has a duty to mitigate its damages. Other sanctions under Rule 11 may include admonishing or reprimanding the offending attorneys, compulsory legal education, or monetary sanctions. *Thomas*, 836 F.2d at 878.

In the Advisory Committee Notes to the 1993 Amendment of Rule 11, suggested factors to consider in deciding the severity of sanctions include:

(1) whether the conduct was wilful or negligent;
(2) whether it was part of a pattern of activity or an isolated event;
(3) whether the conduct infected the entire pleading or only a particular count or defense;
(4) whether the person has engaged in similar conduct in other litigation;
(5) whether the conduct was intended to injure;
(6) the effect of the sanctionable conduct on the litigation process time and/or expense; and
(7) the expertise of the responsible person.

In *Thomas*, the Fifth Circuit emphasized that if the sanction is imposition of an opponent's fees and expenses, those expenses must be caused by the violation, and must be reasonable. 836 F.2d at 878-79. When analyzing "reasonableness," the district court should consider the extent to which the non-violating party sought to mitigate its expenses. *Id.* In *Childs*, the Fifth Circuit reviewed a district court's award of sanctions in the form of the opponent's fees and costs from the time the evidence that his client's case was based on fraud became compelling. 29 F.3d at 1022-23. The district court had reduced the amount of fees it found reasonable from $43,000 to $30,000, finding that this amount was a sufficient sanction. *Id.* at 1023. In *Mercury Air Group, Inc. v. Mansour*, the Fifth Circuit affirmed an award of $200,000 in reasonable attorneys fees and costs as a sanction

against a plaintiff who would have known its suit was baseless if it had paid heed to certain deposition testimony. 237 F.3d 542, 548 (5th Cir. 2001). In *Jordaan*, Chief Judge Fish imposed sanctions of payment of the defendants costs and attorneys' fees, as well as a fine and suspension from practice before the court until payment of the fine where the opponent had notified the sanctioned attorney "early on that the claims contained in the complaint were legally unfounded," and each defendant moved to dismiss for lack of subject matter jurisdiction. 275 F. Supp. 2d at 790 (citing *Childs,* 29 F.3d at 1028).

Here, considering all of the factors, the Court finds that the appropriate sanction is to award the Defendants their reasonable attorneys fees caused by the violation. As addressed at length above, elementary legal research on personal jurisdiction would have prevented this suit from being filed against Defendants Benslimane, Alaoui, A. Kamel, Menkin, Nackvi, Samaha, MPE, MFM, and Mediholding. The case against Bisk and Crain Caton, which was dismissed on threshold legal grounds, is wholly lacking in articulable factual or legal support. The bulk of Plaintiff's causes of action, including the sensational allegations peppered throughout the complaint and RCS accusing Defendants of racketeering, criminal conduct, money laundering, bribery, extortion and terrorism financing, are without evidentiary support and thus appear to have been "instigated as a gamble that something might come of it rather than on the basis of the facts at hand." *See Johnson v. A.W. Chesterton*, 18 F.3d 1362, 1366 (7th Cir. 1994). "It [is] precisely this reckless willingness to impose the burden of unwarranted litigation upon others which Rule 11 was designed to prevent." *Id.*

Thus, because the Court further finds that reasonable factual and legal inquiries would have prevented this suit from being filed against these eleven defendants, the Defendants are awarded all of their reasonable attorneys' fees they expended in defending this suit. The amount and

apportionment of those fees will be determined by separate order.

SO ORDERED.

SIGNED March 17th, 2005

JANE J. BOYLE
UNITED STATES DISTRICT JUDGE